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September 17, 2014

VIA ECF

Honorable William J. Martini
United States District Judge
Martin Luther King Building & U.S. Courthouse
50 Walnut Street
Newark, New Jersey 07102

Honorable Mark Falk
United States Magistrate Judge
United States Post Office and Courthouse Building
Newark, New Jersey 07101

Re: Carpenter Co., *et al.* v. BASF SE, *et al.*
Civil Action No. 08-5169(WJM) (MF)

Woodbridge Foam Corp., *et al.* v. BASF SE, *et al.*
Civil Action No. 08-5759(WJM)(MF)

Dash Multi-Corp., *et al.* v. BASF SE, *et al.*
Civil Action No. 09-5588 (WJM)(MF)

Dear Judges Martini and Judge Falk:

We are co-counsel for Plaintiffs in the in the three related cases above recently remanded to this Court and assigned to your Honor for final pretrial proceedings and trial. The cases were originally filed in New Jersey in 2008 and 2009 and transferred to multi-district litigation in the District of Kansas, *In Re: Urethane Antitrust Litigation*, MDL No. 1616, for coordinated pretrial proceedings. These cases, called the direct action cases in Kansas to distinguish them from the class action cases, arose as a result of Plaintiffs in these cases opting out of a preliminary settlement in a related class action asserting similar claims.

For the Court's convenience, we have attached the Pretrial Order of the Transferee Court Regarding Cases Ready for Remand which was entered on July 1, 2014, in Kansas. The Order was prepared by the Kansas court to provide background, the status of the cases, and issues remaining for completion and resolution here. As you can see from the Order, Plaintiffs, which consist of eleven families of companies, assert that The Dow Chemical Company ("Dow") and a

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number of other producers of urethanes products engaged in a conspiracy to fix the price of certain urethanes products from 1994 through 2003, in violation of Section 1 of the Sherman Act, 15 U.S.C. §1, and Section 4 of the Clayton Act, 15 U.S.C. § 15. Plaintiffs assert that they were damaged by the alleged conspiracy by paying more for the products at issue than they would have absent the conspiracy. Plaintiffs' estimated damages exceed \$600 million. Plaintiffs have settled with all of the defendants except for Dow.

Plaintiffs' cases were coordinated for purposes of pretrial proceedings with the related class action. The cases were coordinated through dispositive motions. The class action was tried in Kansas in early 2013, and a jury returned a verdict of \$400 million against Dow (also the sole remaining defendant in the class action). The class case is currently on appeal before the Tenth Circuit. Discovery and expert work have been completed in the direct action plaintiffs' cases, and dispositive motions have been decided. The milestones which remain to be completed in this Court are the issues addressed in the pretrial order, *i.e.*, deposition designations, identification of trial exhibits and witnesses, motions *in limine*, authentication of documents, jury instructions, trial briefs, and trial. In addition, one *Daubert* motion directed at Plaintiffs' expert is pending for this Court's resolution, and Plaintiffs intend to refile, per the Kansas Court's direction, a motion *in limine* related to one of Dow's experts. The parties have designated docket entries on the docket in the District of Kansas, but we understand that technical difficulties have delayed the transfer of the docket.

Plaintiffs respectfully request a status conference at the Court's earliest convenience, so the parties may address coordination of the cases with the Court, as well as scheduling the completion of the remaining pretrial milestones and a trial date.

Thank you for your attention to this matter. If the Court has any questions, we are available at your convenience.

Respectfully submitted,

CARELLA, BYRNE, CECCHI,
OLSTEIN, BRODY & AGNELLO, P.C.

/s/ James E. Cecchi

JAMES E. CECCHI

cc: All Counsel (via ECF)